

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDWIN CARMICHAEL,

Petitioner,

-v.-

9:04-CV-0187
(LEK/DRH)

D.B. DREW, Warden,

Respondent.

APPEARANCES:

OF COUNSEL:

EDWIN CARMICHAEL
Petitioner, *pro se*
18238-038

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Office of the United States Attorney
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CHARLES E. ROBERTS, ESQ.

LAWRENCE E. KAHN U.S. DISTRICT JUDGE

ORDER

Presently before the Court is a Motion for Reconsideration filed by Petitioner Edwin Carmichael. Dkt. No. 24. Respondent has filed a Response to the Motion. Dkt. No. 30.

Petitioner's Motion seeks reconsideration of this Court's April 5, 2006 Order that denied a Certificate of Appealability and granted Petitioner leave to proceed with his appeal *in forma pauperis*. Dkt. No. 23. The basis for the request is that Petitioner's habeas Petition was brought pursuant to 28 U.S.C. §2241 and, thus, the Certificate of Appealability provisions of 28 U.S.C. §2253 are not applicable. Petitioner does not challenge the Court's ruling granting him leave to proceed *in forma pauperis*.

Respondent's Response to this Motion focused on the Court's jurisdiction to decide this Motion while an appeal to the Second Circuit was pending. Dkt. No. 30.

Since the filing of this Motion, the Second Circuit Court of Appeal has dismissed Petitioner's appeal. Dkt. No. 32. Thus, Petitioner's appeal was processed by the Second Circuit Court of Appeals without regard to this Court's April 5, 2006 Order, and this Motion is now moot.

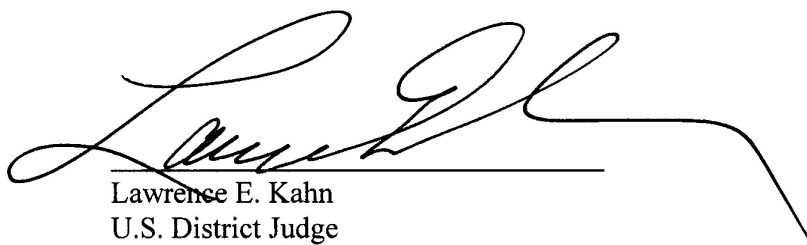
WHEREFORE, it is hereby

ORDERED, that Petitioner's Motion for Reconsideration (Dkt. No. 24) is **DENIED AS MOOT**, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: January 30, 2007
Albany, New York



Lawrence E. Kahn
U.S. District Judge